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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Samuel J Le Mackay,

Plaintiff,

v.

Martin O'Malley¹, Commissioner of
Social Security,

Defendant.

Case No. 1:22-cv-01633-SKO

**STIPULATION AND UNOPPOSED
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES PURSUANT TO THE
EQUAL ACCESS TO JUSTICE ACT;
ORDER**

(Doc. 20)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of SEVEN THOUSAND FOUR HUNDRED EIGHTY-FIVE DOLLARS AND 15/100 (\$7,485.15) under the Equal Access to Justice

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00)
2 under 28 U.S.C. §1920. This amount represents compensation for all legal services
3 rendered on behalf of Plaintiff by counsel in connection with this civil action, in
4 accordance with 28 U.S.C. §§ 1920, 2412(d).

5 After the Court issues an order for EAJA fees to Plaintiff, the government will
6 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to
7 *Astrue v. Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability
8 to honor the assignment will depend on whether the fees are subject to any offset
9 allowed under the United States Department of the Treasury's Offset Program. After
10 the order for EAJA fees is entered, the government will determine whether they are
11 subject to any offset.

12 Fees shall be made payable to Plaintiff, but if the Department of the Treasury
13 determines that Plaintiff does not owe a federal debt, then the government shall cause
14 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to
15 the assignment executed by Plaintiff. Any payments made shall be delivered and
16 made payable to Plaintiff's counsel, Jonathan O. Peña. Additionally, any payment of
17 costs under 28 U.S.C. §1920 may be made either by electronic fund transfer (ETF) or
18 by check.

19 This stipulation constitutes a compromise settlement of Plaintiff's request for
20 EAJA attorney fees, and does not constitute an admission of liability on the part of
21 Defendant under the EAJA or otherwise. Payment of the agreed amount shall
22 constitute a complete release from, and bar to, any and all claims that Plaintiff and/or
23 Counsel including Counsel's firm may have relating to EAJA attorney fees in
24 connection with this action.

25 This award is without prejudice to the rights of Counsel and/or Counsel's firm
26 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
27 savings clause provisions of the EAJA.
28

Respectfully submitted,

Dated: April 10, 2024

/s/ Jonathan O. Peña

JONATHAN O. PEÑA

Attorney for Plaintiff

Dated: April 10, 2024

PHILLIP A. TALBERT

United States Attorney

MATHEW W. PILE

Associate General Counsel

Office of Program Litigation

Social Security Administration

By: * Jessamyn Hanna

Jessamyn Hanna

Special Assistant U.S. Attorney

Attorneys for Defendant

(*Permission to use electronic signature
obtained via email on April 10, 2024).

ORDER

Based upon the parties' foregoing Stipulation and Unopposed Motion for the Award and Payment of Equal Access to Justice Act Fees and Expenses (the "Stipulation") (Doc. 20),

IT IS ORDERED that fees and expenses in the amount of SEVEN THOUSAND FOUR HUNDRED EIGHTY-FIVE DOLLARS AND 15/100 (\$7,485.15) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920, be awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: **April 11, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE